



Mental Health (Scotland) Act 2015

2015 asp 9

PART 1

THE 2003 ACT

Representation by named persons

22 Named person not to be automatic

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) Sections 251 and 253 are repealed.
- (3) In subsection (2) of section 318 (false statements), sub-paragraph (ii) of paragraph (b) is repealed.
- (4) In the definition in subsection (1) of section 329 (interpretation) of “named person”, after the words “the person” there is inserted “(if any)”.

23 Consent to being named person

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 250 (nomination of named person)—
 - (a) in subsection (1), for the words “(3) and (6)” there is substituted “(2A), (3) and (6)”,
 - (b) after subsection (2) there is inserted—

“(2A) A nomination under subsection (1) above is valid only if—

 - (a) a docket to the nomination states that the person nominated has consented to the nomination,
 - (b) the docket is signed by the nominated person, and
 - (c) the nominated person’s signature is witnessed by a prescribed person.”,
 - (c) in subsection (6), for the words “may decline” there is substituted “ceases”.
- (3) In section 257 (named person: Tribunal’s powers)—

- (a) in subsection (3), after the word “(4)” there is inserted “or (5)”,
- (b) after subsection (4) there is inserted—
 - “(5) An order under this section appointing a person to be a patient’s named person may be made only if—
 - (a) a document, signed by the person, states that the person has consented to being the patient’s named person, and
 - (b) the person’s signature is witnessed by someone.
 - (6) A person appointed by an order under this section to be a patient’s named person ceases to be the patient’s named person by giving notice to that effect to—
 - (a) the Tribunal,
 - (b) the patient, and
 - (c) the local authority for the area in which the patient resides.”.

24 Appointment of named person

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 255 (named person: mental health officer’s duties etc.)—
 - (a) subsections (3) to (5) are repealed,
 - (b) in paragraph (b) of subsection (7), sub-paragraph (i) is repealed together with the word “or” immediately following it.
- (3) In section 256 (named person: application by patient etc.)—
 - (a) paragraph (a) of subsection (1) is repealed,
 - (b) in paragraph (b) of subsection (1), for the words “the applicant” there is substituted “a person mentioned in subsection (2) below (“the applicant)”.
- (4) In section 257 (named person: Tribunal’s powers)—
 - (a) subsection (1) is repealed,
 - (b) in subsection (2), for the words from “declaring” to the end there is substituted “as allowed by subsection (3A)”,
 - (c) after subsection (3) there is inserted—
 - “(3A) For the purpose of subsection (2), this subsection allows an order—
 - (a) in any case, to declare that the acting named person is not the named person,
 - (b) if the patient has not attained the age of 16 years, to appoint the person specified in the order to be the patient’s named person in place of the acting named person.”.
- (5) In section 320 (appeal to sheriff principal against certain decisions of the Tribunal), paragraph (t) of subsection (1) is repealed.

25 Ability to act if no named person

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 257 there is inserted—

“Ability to act if no named person

257A Ability to act if no named person

- (1) This section applies if—
 - (a) a patient does not have a named person,
 - (b) the patient has attained the age of 16 years, and
 - (c) the patient is incapable in relation to a decision as to whether to initiate an application or appeal in the patient’s case.
- (2) In subsection (1)(c) above, “incapable” has the same meaning as in section 250 of this Act.
- (3) Each of the persons listed in subsection (9)(a) to (d) below has authority to initiate an application or appeal that may be made by the patient under section 50(1), 99(1), 100(2), 120(2), 125(2), 126(2), 163(1), 164(2), 192(2), 201(1), 204(1), 214(2), 219(2), 220(2), 264(2), 268(2), 320(2), 321(1) or 322(2) of this Act.
- (4) Each of the persons listed in subsection (9)(a) and (b) below has authority to obtain any notice or information that is to be provided under section 54(3), 60(1), 87(2)(c), 124(4) or (6), 127(7), 128(3), 129(3) or (4), 153(2)(c), 200(3), 218(4), (6) or (10)(b), 224(8), 225(3) or 226(3) of this Act.
- (5) The reference in subsection (3) above to section 264(2), 268(2), 320(2), 321(1) or 322(2) of this Act does not apply in relation to a guardian or a welfare attorney of the patient (as that person is already entitled to make an application or appeal under that section).
- (6) In the application of subsection (4) above—
 - (a) the reference to section 87(2)(c) or 153(2)(c) relates only to notice of the determination mentioned in that section (and not also to a copy of the record mentioned in that section),
 - (b) the reference to section 128(3) or 129(4) relates to a responsible medical officer’s reasons only if that officer is satisfied that it is appropriate to give notice of them to a guardian or a welfare attorney of the patient (having regard to the need to ensure the patient’s wellbeing and confidentiality).
- (7) Neither of the persons listed in subsection (9)(c) or (d) below has authority to act in relation to a patient by virtue of this section if the patient has made a written declaration precluding the person (or all persons) from so acting.
- (8) Subsections (2) to (5) and (7) of section 250 of this Act apply to a declaration mentioned in subsection (7) above as they apply to a nomination to which subsection (1) of that section relates (with that section to be read accordingly).
- (9) The listed persons are—
 - (a) any guardian of the patient,
 - (b) any welfare attorney of the patient,
 - (c) the patient’s primary carer (if any),
 - (d) the patient’s nearest relative.”.